the appellant. The appellant, as I said, carried, here I make a correction, 8 to 10 katies of pork with a weighing machine, a knife, a piece of plank and strings and papers. On this evidence it was submitted to me very strenously by the learned counsel for the appellant that it had not been proved that what was carried were goods as defined in section 2 of the Road Traffic Ordinance and therefore no *prima facie* case had been raised against the appellant. With respect I do not agree. It is possible to understand that a person might purchase at any one time a large quantity of pork such as 8 katies but if this particular person is purchasing for his own consumption or for his private purposes this large quantity of pork I see no reason for him to carry with him a weighing machine, a knife and a plank, string and paper. It is obvious that the inference and the only reasonable inference to be drawn was that the knife was to cut the pork into smaller bits, the plank was a portable table on which this operation was to be performed, the weighing machine was to weigh out the pieces that were cut and the string and paper were for wrapping these bits that were hacked out from the lump of meat. This had all the indications of hawking and if there was evidence of hawking then, in my view, a *prima facie* case had been raised against the appellant.

As for his defence it is only necessary to say that it did not cast any doubt on the truth of the prosecution story in the mind of the trial magistrate or in my mind.

The appeal is therefore dismissed and the fines and the order of disqualification are confirmed.

Appeal dismissed.

Solicitors: *Ngan & Tan.*

IN RE SOON CHI HIANG

[O.Cr.J. (Raja Azlan Shah J.) February 6, 1969]
[K.L.—Miscellaneous Criminal Application No. 1 of 1969]

Banishment — Expulsion order — Motion to set aside — Ground that applicant was a citizen of Malaysia — Deprivation of citizenship — Banishment Ordinance, 1959, s. 10.

Contitutional Law — Citizenship — Deprivation of — Malaysia Constitution, arts. 14(1), 24(2) & 28 (3) — Second Schedule Part III para. 2 — Decision not subject to appeal or review in any court — Whether certiorari would lie.

In this case the applicant sought to set aside an expulsion order made against him on the ground that he was a citizen of Malaysia. The applicant was a citizen by operation of law but the order of deprivation had been made against him under article 24(2) of the Constitution on the ground that he "has voluntarily claimed and exercised in a foreign country, namely Communist China, rights available to him under the law of that country, being rights accorded exclusively to its citizens". It was argued on behalf of the applicant that the order of deprivation of citizenship was contrary to article 28(3) of the Constitution as the acts relied on as being done by him were done before Merdeka Day.

Held: the onus was on the applicant to show that he is citizen and he has not discharged that onus as he had not set aside the order of deprivation of citizenship.

Obiter: although the decision of the Federal Government under Part III of the Second Schedule of the Constitution is not subject to appeal or review in any court, this does not preclude the subject from recourse to the courts for the determination of his rights. Judicial review by means of *certiorari* cannot be taken away by implication.

Officials and Ministers must be compelled to observe the law, and it is essential that bureaucracy must be kept in its place.

Cases referred to:—

(1) *Re Hoon Tye Wan* [1965] 1 M.L.J. 90.

(2) *Re Gilmore's Application* [1957] 1 All E.R. 796 at pp. 801-803.

(3) *Soon Kok Leong* v. *Minister of Interior Malaysia* [1968] 2 M.L.J. 88.

MISCELLANEOUS CRIMINAL APPLICATION.

Ben K.C. Cheah for the applicant.

K. Somasundaram (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: In this application made by way of motion the applicant seeks to set aside the expulsion order made by the Minister of Home Affairs on the 6th December 1968, on the ground that he is a citizen of Malaysia pursuant to section 10 of the Banishment Ordinance, 1959.

It is not disputed that he was a citizen of Malaysia by operation of law pursuant to article 14(1)(a). On the 11th of October 1968 the Minister made an order of deprivation of citizenship pursuant to article 24(2) of the Constitution on the ground that he "has voluntarily claimed and exercised in a foreign country, namely Communist China, rights available to him under the law of that country, being rights accorded exclusively to its citizens".

It is argued on his behalf that he is still a citizen because the order of deprivation of citizenship was contrary to article 28(3) which reads:—

"A person who on Merdeka Day became a citizen by operation of law as having been citizen of the Federation immediately before that day shall not be deprived of citizenship under clause (1) or (2) of article 24 by reason of anything done on or before that day;"

In his affidavit in support of the application he deposed that in 1953 his parents sent him to Peking to further his Chinese education and he

only concentrated on his studies and did not participate in any political activities that may be or be deemed to be prejudicial to the security of Malaysia. He further deposed that he did not exercise or voluntarily claim and exercise in that country, namely Communist China, rights available exclusively to her citizens. On his return to Malaya in 1958 he stayed with his parents. He then got married and has now three children. He has not committed any offence nor has he become a member of any political party.

On behalf of the respondent it is argued that the order of deprivation of citizenship made by the Minister is not justiciable. Paragraph 2 of Part III of the Second Schedule to the Constitution was cited in support of the argument:—

"A decision of the Federal Government under Part III of this Constitution shall not be subject to appeal or review in any court."

That being so, it is contended that the applicant is no longer a citizen and therefore the Minister in his subjective determination can lawfully make the expulsion order.

It is common ground that the expulsion order can only be directed against a non-citizen. The burden is upon the applicant to show that he is a citizen in an application to set aside the expulsion order. See *Re Hoon Tye Wan.*[1] Has he discharged that onus? I think not. He has not set aside the order of deprivation of citizenship.

It is true that the said order is not reviewable by the courts by virtue of paragraph 2 of Part III of the Second Schedule but that cannot take away by implication the judicial review by means of *certiorari*. It is a principle not by any means to be whittled down that the subject's recourse to the courts for the determination of his rights is not to be excluded save by clear words. I need only refer to the case of *Re Gilmore's Application*[2] which was cited by Ismail Khan J. in *Soon Kok Leong* v. *Minister of Interior, Malaysia.*[3] Denning L.J. in that case said:—

"I find it very well settled that the remedy by *certiorari* is never to be taken away by any statute except by the most clear and explicit words. The word 'final' is not encugh. That only means 'without appeal'. It does not mean 'without recourse to *certiorari*'. It makes the decision final on the facts but not final on the law. Notwithstanding that the decision is by a statute made 'final', *certiorari* can still issue for excess of jurisdiction or for error of law on the face of the record . . . . If tribunals were to be at liberty to exceed their jurisdiction without any check by the courts the rule of law would be at an end. . . ."

To that illuminating statement I will only add that officials and Ministers must be compelled to observe the law, and it is essential that bureaucracy must be kept in its place.

In the circumstances of this case, as the applicant has not discharged the onus which falls on him, the application must be dismissed.

Application dismissed.

Solicitors: *Cheah, Chew & Tan.*

IN RE R. SAMBASIVAM

[O.C.J. (Raja Azlan Shah J.) February 7, 1969]

[K.L. — Originating Motion No. 11 of 1968]

Administrative Law — Certiorari — Termination of service of public officer — Reasonable opportunity to be heard — Rules of natural justice — General Orders — Effect of.

This was a motion for an order of *certiorari* to quash the decision of the Public Services Commission, in terminating the appointment of the applicant as Junior Assistant Commissioner for Labour. It was alleged that (a) the proceedings being initiated by the secretary to the Ministry of Labour and not by the Head of Department, were *ultra vires* the provisions of General Order 38 and therefore void, (b) the committee of enquiry had failed to consider the question of jurisdiction, (c) the Public Services Commission had been influenced by extraneous considerations without giving the applicant an opportunity to explain them, thereby violating the rules of natural justice, (d) there was likelihood of bias against the applicant, and (e) the committee of inquiry had admitted and acted on hearsay evidence.

Held: (1) the procedural provisions in the General Orders are mandatory but in this case as the Secretary to the Ministry of Labour was also a Head of Department there had been no breach of the provisions of the General Orders;

(2) in this case the committee of inquiry had considered the question of jurisdiction but had only failed to convey its decision to the applicant;

(3) the rules of natural justice had not been violated;

(4) on the facts there was no evidence of likelihood of bias;

(5) the committee of inquiry is not a court of law and, so long as the rules of natural justice are observed, it is not bound to follow strictly the procedure laid down in the Evidence Ordinance.

Cases referred to:—

(1) *General Medical Council* v. *Spackman* [1943] 2 All E.R. 377 at p. 341.

(2) *Russell* v. *Duke of Norfolk & Ors.* [1949] 1 All E.R. 109 at p. 118

(3) *Jeffs* v. *New Zealand Dairy Production and Marketing Board* [1967] 1 A.C. 551.

(4) *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* [1968] 1 W.L.R. 694.

(5) *State of Mysore* v. *Shivabasappa* A.I.R. 1963 S.C. 375.

ORIGINATING MOTION.

S. Woodhull for the applicant.

Ajaib Singh (Federal Counsel) for the respondents.